

U.S. Department of Housing and Urban Development

Special Attention of:

Secretary's Representatives;
State/Area Coordinators; Directors,
Public Housing Divisions; Housing
Authorities; Resident Management
Corporations; Resident Councils'
Fair Housing Enforcement Center
Directors; FHEO Program Operations
and Compliance Center Directors

NOTICE PIH 97-12 (HA)

Issued: March 12, 1997

Expires: March 31, 1998

Cross References:

SUBJECT: Requirements for Designation of Public Housing Projects

PURPOSE: This Notice supersedes PIH Notice 96-60, which was issued on August 5, 1996. It explains the streamlined requirements for public housing agencies (PHAs) that plan to designate projects for elderly families only, disabled families only, or elderly and disabled families. These requirements are contained in Section 10(a) of the "Housing Opportunity Program Extension Act of 1996," which permits PHAs to designate projects after developing a HUD-approved Plan. Section 10(a) of the Extension Act amended Section 7 of the United States Housing Act of 1937.

This Notice also explains the impact of the Extension Act on Allocation Plans that were approved or disapproved under the previous requirements, as contained in 24 CFR Part 945. In addition, it describes the revised Plan requirements for PHAs that plan to designate.

EFFECTIVE DATE: The provisions of Section 10 of the "Housing Opportunity Program Extension Act of 1996" went into effect when they were signed by the President on March 28, 1996. These provisions and the information in this Notice apply until the Department issues regulations revising 24 CFR Part 945, "Designated Housing - Public Housing Designated for Occupancy by Disabled, Elderly, or Disabled and Elderly Families." Previous designated housing regulations, as contained in 24 CFR Part 945 (Revised as of May 1, 1996), no longer apply.

The Department intends to issue revised regulations for 24 CFR Part 945 in the near future. The public will have an opportunity to comment on these regulations when they are issued as a proposed rule. The Department will consider all comments

received before it drafts the final rule.

NON-DISCRIMINATION REQUIREMENTS: Nothing in this Notice relieves a PHA from complying with the non-discrimination provisions of Federal civil rights laws, including but not limited to Section 504 of the Rehabilitation Act and its implementing regulation at 24 CFR Part 8, the Fair Housing Act and its implementing regulation at 24 CFR Part 100, and Titles II and III of the Americans With Disabilities Act and their implementing regulations at 28 CFR Parts 35 and 36.

INFORMATION COLLECTION REQUIREMENT: On December 23, 1996, a Notice of Proposed Information Collection was published in the *Federal Register* for public comment. The proposed information collection requirements contained in this Notice are being submitted to the Office of Management and Budget (OMB) for review, under section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

The information collection, "Requirements for Designating Public Housing Projects; Implementing Section 10(a) of the Housing Opportunity Program Extension Act of 1996," applies to public housing agencies and state and local governments operating public housing programs.

A PHA wanting to designate projects for elderly families or for disabled families has to develop a Plan. Under some circumstances, a PHA may choose to develop a Plan to designate a project formally for elderly and disabled families (a mixed population project). However, this is not required.

The information collection is needed to develop the Plan and to assure that designation satisfies the statutory requirements. The requirements for the contents of the Plan and the statutory provisions are contained in this Notice.

We estimate that, each year, there will be 176 PHAs applying for designation of projects for elderly families, disabled families or elderly and disabled families. In addition, we estimate that the development of the Plan will take an average of 21 hours. The estimated total annual burden will be 3,358.2 hours.

Most of the information a PHA will need to develop its Plan is gathered as a part of the PHA's day-to-day operation. Information from the Consolidated Plan about housing goals and from outside sources about housing needs must be obtained separately.

APPLICABILITY: This Notice and the requirements it describes apply only to projects (or portions of projects) operated by PHAs under the low-income public housing program. They do not apply to projects operated by Indian Housing Authorities.

NO PLANS REQUIRED TO MAINTAIN MIXED POPULATION PROJECTS: The Extension Act provides that PHAs **may** submit plans to formally designate housing for mixed populations of elderly families and persons with disabilities. **However, HUD is not requiring PHAs to submit plans if they wish to continue administering their mixed population housing as housing for mixed populations of elderly families and persons with disabilities.**¹

REQUIREMENTS FOR DESIGNATION OF PROJECTS: Section 10(a) of the Extension Act simplifies and modifies the requirements in Section 7 for PHAs planning to designate. In addition, it substitutes requirements that were not present in the old law.

The major provisions of the revised Section 7 are described below. The requirements are the same whether a PHA designates a project for elderly families, for persons with disabilities, or for mixed populations of elderly families and persons with disabilities.

1. Justification for Designation.

Statutory Provisions. Section 7(d) requires a PHA to submit a Plan to HUD that:

"(1) establishes that the designation of the project is necessary --

"(A) to achieve the housing goals for the jurisdiction under the Comprehensive Housing Affordability Strategy [CHAS] under Section 105 of the Cranston-Gonzales

¹Notwithstanding this provision, PHAs that wish to maintain their "elderly" housing as "mixed population" housing, **and** wish to be eligible to obtain currently available certificates or vouchers to provide alternative housing resources to persons with disabilities are statutorily required to have **an approved plan**. The October 30, 1996, "Notice of Funding Availability for Rental Assistance for Persons with Disabilities, in Support of Designated Housing Allocation Plans," contains more information on this requirement.

"(B) to meet the housing needs of the low-income population of the jurisdiction;"³

HUD Guidance: The statute focuses on the total housing needs of the low-income population of a community, and not one group in particular. The above requirements, however, must be read in the context of the Congressional intent to streamline the designation process and to provide limited HUD review.

In most communities, there are substantial unmet housing needs of both elderly families and persons with disabilities. For these communities, a public housing authority's demonstration that it will make reasonable efforts to provide tenant-based assistance or other appropriate resources to the non-designated group is sufficient basis for designation. The specific nature of the demonstration of reasonable efforts will vary across PHAs, depending on circumstances.

In some cases, PHAs can provide the non-designated group with housing opportunities during the five-year period of the plan at a level comparable to those that the non-designated group would have had if there were no designation. (One-for-one replacement is not required.) However, other cases may exist in which PHAs will not be able to make available to the non-designated group a comparable level of housing resources; documentation of the unavailability of a comparable level of

² The CHAS is no longer a free-standing document. Changes to 24 CFR Part 91 made the CHAS part of a jurisdiction's Consolidated Plan. All states, as well as all communities with populations of 50,000 or more, are required to develop a Consolidated Plan. This document must contain a Strategic Plan that identifies goals and priorities for obtaining affordable housing, as well as obstacles to meeting those goals.

In their justification for designation, all PHAs in communities with local Consolidated Plans will need to demonstrate that designation is consistent with the goals and priorities of the Consolidated Plan **and** demonstrate that designation is necessary to meet the housing needs of the low-income population of the jurisdiction.

PHAs in communities with populations under 50,000 will not have a local Consolidated Plan. For these PHAs, the state Consolidated Plan may provide information about regional housing goals or contain other information relevant to a decision to designate. State plans may provide some useful data for the HA because they will contain a housing market analysis that describes the general characteristics of the state's housing markets, including information about the cost, supply, demand for, and condition of housing. PHAs whose jurisdiction is encompassed by the state Consolidated Plan should consider using the State Plan information in their justification to designate.

If the state Consolidated Plan is silent regarding a PHA's housing goals, and there is no local Consolidated Plan, a PHA will be able to base its designation solely on a demonstration that designation is necessary to meet the low income housing needs of the jurisdiction.

³ For a discussion of recommended sources of data to help PHAs identify low-income housing needs, see the Appendix at the end of this Notice.

housing resources would demonstrate that these PHAs have made reasonable efforts.

PHAs may wish to rely on a range of data sources to describe the reasonable efforts that they will make to provide for the housing needs of non-designated groups. PHAs should estimate

5

vacancies in the project to be designated during the Plan period, based on past experience and any other relevant information. PHAs also should use waiting list, admissions, and certificate/voucher-use data to estimate how many families from the designated and non-designated groups would have filled the vacancies, absent designation. HUD will allow proposed designations as long as the plans are not incomplete with respect to significant matters the statute requires, and do not contain information subject to substantial challenges based on evidence available to HUD.

When determining which buildings to designate, PHAs should consider whether the designation will increase minority concentrations.

2. Project Description

Statutory Provisions. Section 7(d) requires a Plan that:

"(2) includes a description of --

"(A) the project (or portion of a project) to be designated;

"(B) the types of tenants for which the project is to be designated;

"(C) any supportive services to be provided to tenants of the designated project (or portion);⁴

"(D) how the design and related facilities (as such term is defined in Section 202 (d)(8) of the Housing Act of 1959) of the project accommodate the special environmental needs of the intended occupants;"⁵

⁴ "Supportive services" are defined, in Section 10(d)(1) of the statute, as "services designed to meet the special needs of residents."

⁵Section 202(d)(8) of the Housing Act of 1959, in effect prior to November 28, 1990, defined "related facilities" as buildings or rooms, such as dining rooms or cafeterias, community rooms, workshops, day or outpatient health facilities or other essential service facilities that are suitable for elderly families or persons with disabilities.

3. Alternative Resources

Statutory Provisions. Section 7(d) requires a Plan that:

"(2) includes a description of ...

"(E) any plans to secure additional resources or housing assistance to provide assistance to families that may have been housed if occupancy in the project were not restricted pursuant to this section."⁶

4. Treatment of Current Tenants Because of Designation.

a. No Eviction or Lease Termination Due to Designation.

Statutory Provision. Section 7(b) states that:

"...any tenant who is lawfully residing in a dwelling unit in a public housing project may not be evicted or otherwise required to vacate...because of the designation...."

b. Voluntary Relocation Because of the Designation.

Statutory Provision. Section 7(c) states that the PHA must provide the following to persons and families who agree to be relocated in connection with a designation:

"(1) [A] notice of the designation and an explanation of available relocation benefits, as soon as is practicable for the agency and the person or family."⁷

"(2) [A]ccess to comparable housing (including appropriate services and design features), which may include tenant-based rental assistance under Section 8, at a rental rate paid by the tenant that is comparable to that applicable to the unit from which the person or family has vacated.

⁶ For a discussion of some of the housing resources that may serve as alternatives for the non-designated group, see discussion in Appendix.

⁷ In cases where a PHA wishes to offer relocation to members of the non-designated group, the PHA must notify all members of that group who are tenants of the designated project that he or she may relocate. The PHA should use the notice procedures that are in the PHA's lease with the tenant.

The notice must describe what the PHA's statutory obligations are to the people who are willing to relocate, including a description of available relocation benefits, the right to relocate to housing that is comparable in costs, services, and design factors, and payment of actual, reasonable moving expenses.

The notice must also state that relocation is **voluntary** and that **no one will be required to relocate**.

"(3) [Payment of actual, reasonable moving expenses."

c. Inapplicability of Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970.

Statutory Provision. Section 7(g) states that:

"No tenant of a public housing project shall be considered to be displaced for purposes of the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 because of the designation of any existing project or building or portion thereof."⁸

5. Eligibility of Near-Elderly Families.

Statutory Provision. Section (7)(a)(3) states that:

"If a public housing agency determines that there are insufficient numbers of elderly families to fill all the units in a project (or portion of a project) designated...for occupancy by only elderly families, the agency may provide that near-elderly families may occupy dwelling units in the project (or portion)."⁹

6. HUD Review and Standards for Determination of Non-Compliance.

Statutory Provisions. Section 7(e)(1) provides that:

"The Secretary shall conduct a limited review of each plan to ensure that the plan is complete and complies with the requirements of subsection (d)."¹⁰

Section 7(e)(3) provides that:

The Secretary may determine that a plan does not comply with the requirements under subsection (d) only if--

"(A) the Plan is incomplete in significant matters required under this subsection; or

"(B) there is evidence available to HUD that challenges,

⁸ The Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 provides specified relocation benefits to persons who qualify as "displaced" from their homes or business because of the actions of either federal agencies or recipients of federal financial assistance. [See 46 U.S.C. 4601 et al.] Persons who are offered the opportunity to relocate because of a project designation do not qualify as "displaced" persons under this statute.

⁹ A near-elderly family is family whose head, spouse or sole member is at least 50 years but less than 62 years old.

¹⁰. Also see paragraphs 2 and 3 of this Notice regarding plan requirements.

in a substantial manner, any information provided in the plan."

7. Notification of HUD Decision.

a. Time Frame

Statutory Provisions. Section 7(e)(1) requires that HUD:

"... notify each public housing agency submitting a plan whether the plan complies...not later than 60 days after receiving the plan.¹¹ If...[HUD]...does not notify the public housing agency..., the plan shall be considered...to comply...and...[HUD]...shall be considered to have notified the agency of such compliance upon the expiration of such 60-day period."

b. Content of Notification Where Plan Does Not Comply

Statutory Provisions. Section 7(e)(2) requires that HUD:

"...specify in the notice...the reasons for the noncompliance and any modification necessary for the plan to meet....[the]...requirements."

8. Duration of Plan and Extensions of Designation.

Statutory Provisions. Section 7(f) states that all designations are in effect for five years from the date of HUD's notification of approval of the Plan. PHAs may amend their Plans before the expiration of the five-year period by submitting a revised Plan to HUD. For revised Plans, the provisions stated in (6) and (7) above regarding HUD review and notification of HUD decision continue to apply. Two-year extensions beyond the five years are permitted when a PHA submits information needed to update the Plan.

WHERE TO SUBMIT A PLAN

HUD has not delegated authority for approval of plans. Therefore, the PHA must send the Plan to HUD in Washington, D.C., for review and approval or disapproval. The address is HUD, Office of Public and Assisted Housing Operations, Room 4206, 451 Seventh Street, S.W., Washington, D.C., 20410.

The PHA also should send a copy of the Plan to the unit of its State or local government that administers the CHAS/Consolidated

¹¹HUD will provide written notification regarding whether the Plan complies with the statute.

Plan. That governmental unit should be informed that, if it wishes to comment on the PHA's Plan to designate PHA housing, it should send them to HUD, Office of Public and Assisted Housing Operation, Room 4206, 451 Seventh Street, S.W., Washington, D.C., 20410.

FUNDING AVAILABILITY FOR SECTION 8 CERTIFICATES AND VOUCHERS:

On October 30, 1996 a *Federal Register* Notice of Funding Availability (NOFA) announced FY 1996 funding for approximately 4,300 Certificates and Vouchers for PHAs with approved plans to designate housing. This funding will be available until it is all obligated. A NOFA announcing availability of additional FY 1997 funds is expected in the future.

PLANS APPROVED OR DISAPPROVED UNDER THE PREVIOUS STATUTE:

1. Allocation Plans previously approved continue to be in effect. They do not have to be revised to meet any new requirements. However, they are now in effect for five years from the date of approval, not two years.
2. Allocation Plans that were disapproved, still are disapproved. If the PHA wants to submit a revised Plan, it must meet the new statutory requirements.

IF A PHA HAS QUESTIONS ABOUT THE STATUTORY REQUIREMENTS BEFORE OR DURING ITS PLAN DEVELOPMENT, IT SHOULD CALL FOR TECHNICAL ASSISTANCE THE MARKETING, LEASING, AND MANAGEMENT DIVISION IN THE OFFICE OF PUBLIC AND INDIAN HOUSING (IN HUD HEADQUARTERS). THE TELEPHONE NUMBER IS (202) 708-0744. IN ADDITION, IF QUESTIONS ARISE AS HUD STAFF REVIEW A PLAN, THEY WILL CONTACT THE PHA.

_____/S/_____
Kevin Emanuel Marchman, Acting Assistant
Secretary for Public and Indian Housing

APPENDIX - HOW TO PREPARE AN APPROVABLE PLAN

As of the date of this Notice, HUD has received plans from 68 jurisdictions, a substantial majority of which have been approved. This appendix provides guidance to assist housing authorities in developing an approvable plan. It addresses some of the common questions that arise as authorities develop plans. The appendix is intended to be helpful and is not intended to impose additional requirements.

Balancing the Needs of the Community --The statute focuses on the total housing needs of the low-income population of a community, and not one group in particular. Successful Plans strike a balance between the needs of, and resources available to, designated and non-designated populations.

Fair Housing -- When determining which buildings to designate, PHAs should consider whether the designation will increase minority concentrations.

Sources of Information on the Housing Needs of the Low-Income Population -- PHAs may wish to rely on a range of data sources to assess and describe the housing needs of, and resources that would have been and can be made available to, their low-income populations (as required by Section 7(d) of the statute). Data sources include:

- Ongoing analysis of waiting lists, such as the ratio of disabled families admitted compared to elderly families admitted before the designation;
- Unit assignment data;
- Unit turn-over data;
- Vacancy data;
- Voluntary transfer data;
- Near-elderly families data;
- Housing Needs Survey;
- A PHA jurisdiction's Consolidated Plan (includes census data),
- Local advocacy groups; and
- Public and private agencies familiar with the needs of the designated and non-designated populations.

Additional Housing Resources -- The Plan should describe any plans to secure additional housing resources that will be available to families in the non-designated group (as required by Section 7(d)(2)(E) of the statute). These resources may include the following:

- Existing housing owned or controlled by the PHA or by private firms or non-profit organizations that are available and affordable in the appropriate unit sizes. (In addition, a PHA preference given to the non-designated group for the remaining public housing units is a housing resource.)
- New housing resources created by the PHA.
- New housing resources created by a PHA adopting a Section 8 local preference for the non-designated group or by applying for Certificates/Vouchers under the NOFA "Rental Assistance for Persons with Disabilities, in Support of Designated Housing Allocation Plans."
- New housing resources created by private firms or non-profit organization that will be available and affordable in the appropriate unit sizes.

PHAs should specify in their Plans the reasonable efforts they will make to replace the housing resources that will be newly unavailable to the non-designated group. The specific nature of the demonstration of reasonable efforts will vary across PHAs, depending on circumstances.

Accessible Housing -- In describing how the plan meets the needs of both the designated and non-designated group, the plan should address housing options for persons who need accessible housing. Many communities do not have sufficient affordable accessible housing in the private market, and usually, most, if not all, of the accessible one-bedroom housing in the public housing stock is located in "mixed" buildings. One possible solution to this problem is to exclude accessible units from designation so that they are available to persons of any age who need them.¹²

¹². Generally, under Section 504 of the Rehabilitation Act of 1973 and its implementing regulations, the PHA must pay for modifications of public housing units that are needed to accommodate the disabilities of public housing tenants. Owners of private-market rental housing do not have the same financial obligations to modify dwellings.

Those individuals with disabilities who need modifications and who can not longer live in public housing because of designation may have difficulty using Section 8 certificates/vouchers if they cannot obtain assistance in paying for those modifications. In those instances, PHAs should provide whatever resources are needed to pay for modifications that are necessary to make an equivalent number of units available. One solution PHAs have developed to

HUD's Review of Plans -- A determination of non-compliance because of "challenging" evidence may result from information that comes from outside sources. This could include information from the Consolidated Plan or the CHAS or from outside groups or individuals.

PHAs should bear in mind that advocates, residents, and members of the community may choose to submit comments about a plan to HUD, which HUD will take into account in its review.

HUD is fully committed to its responsibility to assist PHAs that submit non-complying plans. HUD will work with these PHAs to ensure that the PHA staff understand the modifications needed for compliance with the statute.

fulfill their responsibility to provide additional housing is to locate sources of funding, such as CDBG funds, that they can use to assist these tenants.